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COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended Working Group
on a draft optional protocol to the
Convention on the Rights of the Child
on involvement of children in armed
conflict
Second session, Geneva
15-26 January 1996

COMMENTS ON THE REPORT OF THE WORKING GROUP

Report of the Secretary-General

Addendum

Comments submitted by the Office of the United Nations High Commissioner for Refugees

[Original: English]
[1 December 1995]

1. In general, UNHCR strongly advocates the drafting of an optional protocol on the involvement of children in armed conflict which offers the broadest protection for children.

2. In preparing this response, UNHCR has had the benefit of reviewing the joint NGO comments submitted by the Friends World Committee for Consultation (Quakers) made by the NGO Group for the Convention on the Rights of the Child and the International Council of Voluntary Agencies. 1/

1/ See E/CN.4/1996/WG.13/2.

Preamble

3. We suggest that the fifth paragraph beginning with "Convinced" be amended so that the fourth line reads "the best interests of the child shall be a primary consideration".

Article 1

4. We support adoption of this article in the following form: "States parties shall take all feasible measures to ensure that persons who have not attained the age of 18 years do not take part in hostilities."

5. UNHCR strongly supports the prohibition on children under the age of 18 years being involved in hostilities. UNHCR is of the firm view that participation in hostilities is a brutalizing experience, on all accounts, which children should be spared. Moreover, the Office believes that children under the age of 18 years do not have the maturity nor the competence to make a decision concerning their involvement in armed conflict. They are not equipped to understand fully the significance or the consequences of such a decision.

6. In connection with the issue of direct and indirect involvement, UNHCR has considerable field experience in conflict situations and holds the position that children need protection from involvement in hostilities of both a direct and an indirect nature. In the field there is often very little difference between these two forms of participation. Children used to perform any support function, such as porters, spies and mine sweepers, are in many cases just as vulnerable to danger as children who are actual combatants. Furthermore, what initially may involve participation of a mere indirect nature may later, by will or as a matter of necessity, evolve into direct participation. UNCHR strongly advocates that the prohibition on participation should be very broadly construed to prevent both direct and indirect participation in conflicts.

Article 2

7. UNCHR supports the total prohibition of compulsory recruitment of children under 18 years into the armed forces, as stated in the first sentence of draft article 2 (1).

8. However, UNHCR advocates that the age limit for recruitment on a voluntary basis should also be 18 years, rather than 16 years, as currently proposed in the second sentence. Furthermore, the Office opposes voluntary recruitment even where the consent of parents or legal guardians has been obtained. The true nature of "voluntary" can often be open to question. As noted in the study on child soldiers which was recently prepared on behalf of the Henri Dunant Institute, "Child soldiers: the role of children in armed conflicts":

> "The vast majority of young soldiers are not forced into participating in conflict, but are subject to many subtly manipulative motivations and pressures that are all the more difficult to eliminate than blatant forced recruitment." (p. 30) "The line between voluntary and coerced participation is fluid and uncertain." (p. 168)

9. The UNHCR Guidelines on Refugee Children draw a similar conclusion wherein it is noted that "Sometimes [children] join voluntarily, for a variety of reasons: physical protection, food and other care, belief in a cause, social pressure, revenge, and adventure". (p. 85)

10. In relation to article 2 (3), UNHCR supports the position taken in the above-noted NGO response. Namely, while UNHCR believes that civilian rather than military schooling is in the best interests of the child, we understand that a clause may need to be included which provides an exception for military schools and academies in the interest of accommodating States who would not otherwise be able or willing to become parties to the protocol. In such a case, we support a clear and tightly drafted clause.

New draft article (p. 33)

11. In relation to the new draft article, UNHCR supports the position expressed by the NGO group:

> "While it is important to prevent the recruitment and use of under-18-year-olds by governmental forces, most child soldiers today are serving in non-governmental armed forces or groups. We warmly welcome, therefore, the consideration given to this issue by the Working Group and its efforts to seek ways to reduce the incidence of such involvement. We recognize the difficulties in seeking to bind non-governmental entities by means of an international human rights law instrument, and the need not to provide recognition to such forces. At the same time, the protocol will be failing in its aim of protecting children from involvement in armed conflicts unless it addresses this issue. We would support a brief statement of the principle of non-recruitment and participation in hostilities of under-18s, with a corresponding legal obligation on States parties to ensure the application of this provision."

Article 3

12. UNHCR supports this draft article as worded.

New draft article (second on p. 34)

13. We suggest that this may be more appropriately included in the preamble.

Article 4

14. Should the second option be retained so that reservations to specified articles are not allowed, then a clause should also be added to permit the withdrawal of reservations. Similar wording to that of article 51.3 of the Convention on the Rights of the Child could be employed.

Article 5

15. UNHCR supports this draft article as worded.

New draft article (bottom of p. 34)

16. UNHCR strongly supports the proposals contained in this article.

Article 6

17. UNHCR supports this draft article as worded.

Article 7

18. UNHCR supports this draft article as worded.

Article 8

19. UNHCR supports the number of States parties to bring the protocol into force being 10.